statute involved is held not to be a deprivation of liberty or property without due process of law; nor a denial of the equal protection of the laws; nor an invalid classification as to companies properly included, because others may be improperly included; nor an unlawful interference with the employee's liberty to contract, inasmuch as it operates on him but indirectly, while the direct restriction upon the employer's right is unobjectionable.

EQUITABLE JURISDICTION TO RESTRAIN LEGAL PROCEEDINGS UNDER ALLEGED UNCONSTITUTIONAL STATUTE.

The jurisdiction of equity to restrain proceedings at law to collect penalties imposed by an alleged unconstitutional statute —when the constitutionality of the statute could be determined in a suit at law—was recognized in the recent case of *Consolidated Gas Co.* v. *City of New York* (Circuit Ct. of U. S. for South. Dist. of N. Y., opinion filed Dec. 20, 1907). In so holding, the decision is in accord with the majority view.[1] This view rests upon the jurisdiction of equity to prevent a multiplicity of suits.

In general, there are two classes of cases in which equity takes jurisdiction to prevent a multiplicity of suits: (1) where a single plaintiff or defendant in order to secure redress must bring or defend a number of suits; (2) where a number of plaintiffs or defendants are parties to a litigation which presents but one issue of law or fact. According to the majority view above-mentioned, the first class is further divided into cases (a) where a suit at law will not finally determine the rights of the parties, as in ejectment and nuisance, and (b) where a suit at law does determine the rights of the parties, but where a multitude of suits may arise before any single suit is determined.[2] In the first sub-division equity will not interfere until the plaintiff's right has been established at law, and this, because the multiplicity of suits does not generally arise until *after* the plaintiff's right has so been established; in the second, however, it is not requisite that the plaintiff's right should first have been established at law, since the multiplicity of suits here arises *before* his right has been established. The minority view has ignored the second sub-division, and has

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[1] City of Beckham, 118 Fed. Rep. 339; *Schlitz Brewing Co.* v. *City*, 117 Wisc., 297; *Sylvester* v. *Lewis*, 130 Mo. 323; *Davis* v. *Fleming*, 128 Ind. 271.

[2] Pomeroy's Eq. Jurisp. Sec. 254.

therefore announced the doctrine that as between two parties equity will not interfere to prevent a multiplicity of suits, until the plaintiff has established his right at law.[3] Such a result, it is submitted, violates a principle of the equitable doctrine regarding multiplicity of suits and arbitrarily denies relief to a suitor whose equity is as strong as in any instance falling within this field of equity jurisdiction.

Another and broader ground suggested for the interposition of equity in this class of cases is the prevention of irreparable injury, and if this be recognized, then the suitor might obtain relief even in those jurisdictions which deny a remedy under the doctrine regarding multiplicity of suits.[4] In a similar class of cases, *i. e.*, those involving the jurisdiction of equity to enjoin proceedings at law under an invalid tax ordinance, the courts have acted not only upon the ground of preventing a multiplicity of suits, but also of preventing irreparable injury,[5] *e. g.*, where the tax is collected by the state, against whom no legal proceedings could be maintained. If this analogy is to prevail in the class of cases under consideration, the question remains as to what constitutes such an irreparable injury. In general, such an injury would seem to be any substantial interference with the plaintiff's business, as where the statute provided for the arrest of the plaintiff's agents, for the seizure of property, or where, as in the case of a public service corporation, disturbances on the part of the public might result from the plaintiff's attempted exercise of his alleged legal rights.[6] If, as in the recent case under discussion, the statute merely provides for the collection of a penalty, the question as to whether there would exist the danger of irreparable injury is more difficult, although there is some authority to the effect that this would be sufficient to give equity jurisdiction.[7] Since, however, the defense of the unconstitutionality of the statute could be interposed in the suit brought at law to recover the penalty, it is difficult to see why the refusal of equity to assume jurisdiction would submit the plaintiff to irreparable injury.

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[3] *West* v. *Mayor,* 10 Paige, (N. Y.) 539. This case is the basis of the minority view. *Ewing* v. *Webster,* 103 Iowa 226; *Poyer* v. *Village,* 123 Ill. 111.

[4] *Ewing* v. *Webster City,* 103 Iowa 226, where the court after denying jurisdiction to prevent a multiplicity of suits took up the question of irreparable injury; it was decided that such injury did not exist in that case.

[5] *Dows* v. *City,* 11 Wall. 108.

[6] *Milwaukee Ry.* v. *Bradley,* 108 Wisc. 467.

[7] *Schlitz Brewing Co.* v. *City,* 117 Wisc. 297; cf. *Chicago Ry.* v. *Dey,* 35 Fed. Rep., 866, at p. 882.